



July 14, 1999

Mr. Paul Sarahan  
Director, Litigation Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13078  
Austin, Texas 78711-3087

OR99-1948

Dear Mr. Sarahan:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 126108.

The Texas Natural Resource Conservation Commission (the "commission") received an open records request for a variety of information concerning "the operations" of three specified facilities. In response to the request, you submit to this office for review the information which you assert is responsive.<sup>1</sup> You state that the commission will make available to the requestor some responsive information. You contend, however, that the submitted records are excepted from required public disclosure by sections 552.107 and 552.111 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

You first contend that the documents you submitted to this office are excepted from required public disclosure pursuant to section 552.107 of the Government Code. Section 552.107(1) protects from disclosure information that reveals client confidences to an attorney or that reveals the attorney's legal advice, opinion, and recommendation. *See* Open Records Decision No. 574 (1990). We note that section 552.107 does not provide a blanket exception for all communications between clients and attorneys or all documents created by an attorney. Where an attorney represents a governmental entity, the attorney-client privilege protects an attorney's legal advice and confidential attorney-client communications. *Id.* Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. However,

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<sup>1</sup>You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information.

section 552.107(1) does not protect purely factual information. *Id.* We have marked the documents, or portions thereof, that the commission may withhold from the public pursuant to section 552.107(1).

Section 552.111 excepts from disclosure inter-agency or intra-agency communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body.<sup>2</sup> *See Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). Section 552.111 excepts from required public disclosure preliminary drafts of documents if those documents are related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final documents. *See* Open Records Decision No. 559 (1990). Additionally, in Open Records Decision No. 559 (1990), this office held that a preliminary draft of a document *that is intended for release in a final form* necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such may be withheld pursuant to the predecessor of section 552.111. The draft document before us directly pertains to policy matters concerning the commission. Assuming that this document in fact is released to the public in its final form, we conclude that the commission may withhold the draft document in its entirety pursuant to section 552.111.

You also contend that the documents you submitted to this office are excepted from required public disclosure pursuant to section 552.111 as attorney work product. The first requirement that must be met to consider information "attorney work product" is that the information must have been created for trial or in anticipation of litigation. The second requirement that must be met is that the work product "consists of or tends to reveal the thought processes of an attorney in the civil litigation process." Open Records Decision No. 647 at 4 (1996). Based on your representations, we assume that the information you seek to withhold pertains to an enforcement action by the commission against the facilities at issue. After reviewing your arguments, we conclude that you have met your burden of establishing that some of the information, which we have marked, constitutes attorney work product.

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<sup>2</sup>Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning of the first name.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID#126018

encl: Marked documents

cc: Mr. Steven Raatz  
Energy & Chemical Risk Consultants  
4122 Hawthorne Avenue  
Dallas, Texas 75219  
(w/o enclosures)